

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

ILENE MECKLEY and
MARTIN LEMUS,

Plaintiffs,

VS.

No. 06-1035-T-An

QUALITY CARRIERS, INC.,
et al.,

Defendants.

ORDER DENYING PLAINTIFFS' MOTION TO STRIKE

Plaintiffs filed this action in the Circuit Court of Madison County, Tennessee, for personal injuries allegedly received in an automobile accident. Defendants removed the action to this court with jurisdiction predicated on diversity of citizenship, 28 U.S.C. § 1332. Plaintiffs have filed a motion to strike from Defendants' answer allegations of causative fault against an unidentified driver on the ground that Tennessee law prohibits assignment of fault to unidentified parties. Defendants have filed a response to the motion. For the reasons set forth below, Plaintiffs' motion is DENIED.

Fed. Rule of Civ. Proc. 12(f) allows the court to strike, either on motion of a party or on its own initiative, “any redundant, immaterial, impertinent or scandalous matter” in a pleading. 5A Fed. Prac. & Proc. Civ. 2d §1382. The court has significant discretion in disposing of such a motion. However, motions to strike on these grounds are not favored,

“often being referred as ‘time wasters,’” and will usually be denied unless the matter to be stricken has no possible relation to the controversy and may cause prejudice to one of the parties. Id., quoting Pessin v. Keeneland Ass’n., 45 F.R.D. 10, 13 (E.D. Ky. 1968).

Material is said to be impertinent, for purposes of Rule 12(f), if it consists of statements that do not pertain, and are not necessary, to the issues in question. “There is considerable overlap between the concepts of ‘impertinent’ and ‘immaterial’ matter. Id. Scandalous material is that which “improperly casts a derogatory light on someone,” usually a party to the action. Id.

The phantom driver defense presented by Defendants is neither redundant nor immaterial nor impertinent nor scandalous under Rule 12(f). Whether fault can be attributed to the unidentified driver will be resolved prior to submission of that issue to the factfinder.

Accordingly, Plaintiffs’ motion to strike is DENIED.

IT IS SO ORDERED.

s/ **James D. Todd**
JAMES D. TODD
UNITED STATES DISTRICT JUDGE